

NEBRASKA BOARD OF PHARMACY  
**MEETING MINUTES**  
**May 8, 2006**

**ROLL CALL**

Curt Barr, R.P. Chair, called the meeting of the Board of Pharmacy to order at 8:00 a.m. in the Staybridge Room of Staybridge Suites, located at 2701 Fletcher Avenue, Lincoln, NE. Copies of the agenda were sent to Board members and other interested parties prior to the meeting. The following Board members answered roll call:

C. Curt Barr, R.P., Chairperson  
Kevin Borchert, R.P., Vice-Chairperson  
Linda Labenz, Secretary  
Richard Zarek, R.P.  
Roger Kaczmarek, R.P.

A quorum was present and the meeting convened.

Also present from the Department were: Becky Wisell, Section Administrator; Vonda Apking, Credentialing Coordinator; Pharmacy Inspectors: Tony Kopf, R.P., Ronald Klein, R.P., and Mike Swanda, R.P.; Duane Newland, Jeff Newman, and Susanne Rydberg Investigators, and Michael Grutsch, P.A., Program Manager, from Investigations Division; and Lisa Anderson, Assistant Attorney General.

**REVIEW OF AGENDA**

Additions, Modification, Reordering

Zarek requested that the Board remove following items from the consent agenda for further discussion: the initial application for Todd Ahlers, Lynsey Liebig; the reinstatement application of John Johnson; and the mail service pharmacy renewal application of Pet Med Express, Inc. Barr requested that the Board remove the following items from the consent agenda for further discussion: the initial application of Jill Noerrlinger and Kathryn Yambor. Borchert requested that the mail service pharmacy renewal application of Prime Therapeutics, LLC be removed from the consent agenda for discussion. Grutsch requested that the initial application of Jonathan Merchen be removed from the consent agenda for further discussion.

Adoption of Consent Agenda

Zarek moved, seconded by Labenz, to approve the consent agenda as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Adoption of Agenda

Labenz moved, seconded by Zarek, to approve the agenda as amended with the Chairperson having the authority to rearrange as needed. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

**INVESTIGATIONAL REPORTS, DISCIPLINARY REPORTS AND CONTROLLED SUBSTANCES AUDIT REPORTS--  
CLOSED SESSION**

Labenz moved, seconded by Borchert, to close the session at 8:04 a.m. to receive investigation reports, disciplinary reports and controlled substances audit reports. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Zarek moved, seconded by Labenz, to reopen the session at 12:35 p.m. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

**DISCIPLINARY/NON-DISCIPLINARY INFORMATION – ACTIONS TAKEN/PENDING –CONSENT – OPEN SESSION****(7) Disciplinary/Non-Disciplinary Information – Actions Taken/Pending – Consent****Disciplinary/Non-Disciplinary Information – Actions Taken/Pending**

<b>Name</b>	<b>Actions Taken and/or Pending</b>	<b>Alleged Violation</b>
Asher, Richard	Petition for Disciplinary Action 2/27/06  Hearing 4/14/06 – Continued  Hearing 5/17/06	Failure to maintain accurate records of receipt and disposition of all controlled substances accepted into inventory.
Bader, Tom	Denial of Initial Licensure Application  Hearing 1/31/06 – Continued  Hearing 3/16/06 – Continued  Hearing 3/27/06  Findings of Fact, Conclusions of Law and Order 4/26/06 <ul style="list-style-type: none"><li>• Issue a license to practice Pharmacy</li></ul>	Answered “No” to having ever been disciplined, but documentation showed that he had been disciplined in Colorado.
Barnes, William	Surrender Order 3/13/06	Theft of Ultram, Oxycodone, Hydrocodone, Ambien and Lorazepam from his place of employment for personal use; dispensed antibiotics and Flexeril to family members and employees without a valid prescription; practiced while impaired.
Clausen, Eric (Intern)	Petition for Disciplinary Action 4/20/06  Hearing 5/23/06	Theft of hydrocodone.
Fagan, Donald R.	Petition for Disciplinary Action and Temporary Suspension 3/6/06  Hearing 3/22/06  Order on Temporary Suspension 3/8/06  Findings of Fact, Conclusions of Law and Order 4/16/06 <ul style="list-style-type: none"><li>• Suspension 3/2/06 through 9/2/06</li><li>• He is allowed to apply for reinstatement after meeting certain conditions.</li></ul>	Theft of APAP/Codeine from place of employment; practicing pharmacy while impaired; possession of a controlled substance without a valid prescription; Opioid dependence.

Name	Actions Taken and/or Pending	Alleged Violation
Fluharty, Stuart	Petition for Disciplinary Action 4/5/06  Order on Agreed Settlement 4/19/06 <ul style="list-style-type: none"> <li>Censure</li> <li>Civil Penalty \$500</li> <li>3 year Probation</li> </ul>	Obtaining and dispensing controlled substances without a valid prescription for his wife; felony conviction in the state of Wyoming for acquiring, obtaining or attempting to acquire or obtain the possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception or subterfuge; failure to report felony conviction to the Department within 30 days.
Halfhide, Arthur	Petition for Disciplinary Action 3/9/06  Hearing 5/9/06	Dispensing medications to persons who have not been assessed or provided a valid prescription by an authorized provider constitutes unlawful practice of medicine; practicing pharmacy in a pattern of negligent conduct; dispensing without a medical order; dispensing medications without a label affixed to a prescription bottle.
Hardman, Joann	Petition for Disciplinary Action 4/19/06  Pending order on Agreed Settlement	Inability as pharmacist in charge to maintain complete and accurate records of receipt and disposition of all controlled substances.
Hooi, Tony G.	Petition for Disciplinary Action 3/30/06  Hearing 5/11/06	Failure to conduct an adequate drug utilization review prior to dispensing of the drug.
Irish, Kevin	Petition for Disciplinary Action 3/31/06  Hearing 5/17/06 – Continued  Hearing 6/1/06	Four convictions of Driving Under the Influence; alcohol dependence; failure to report misdemeanor conviction within 30 days.
Niedbalski, Steven T.	Petition for Disciplinary Action and Temporary License Suspension 1/27/06  Hearing 2/8/06  Amended Petition for Disciplinary Action and Temporary Suspension 1/27/06  Order for Temporary License Suspension 1/27/06  Order on Agreed Settlement 4/19/06 <ul style="list-style-type: none"> <li>Voluntary Surrender in lieu of discipline for a minimum of 2 years.</li> </ul>	Theft of controlled substances over a period of two years; failure to report termination of employment within 30 days; possession of a controlled substance; felony conviction.
O'Grady, Greg	Petition for Disciplinary Action 4/4/06  Amended Petition for Disciplinary Action 4/25/06  Hearing 5/10/06	Failure to conduct an adequate drug utilization review prior to dispensing a refill prescription for Lamictal.

Name	Actions Taken and/or Pending	Alleged Violation
Pranno, Faith Mary	Petition for Disciplinary Action 10/4/05  Hearing 1/27/06 - Continued	Dispensed a medical order for "Brookhouser Solution" compounded by a pharmacy technician. The solution dispensed was compounded using 176 mg of Atropine instead of .176 mg. Admitted that she was the pharmacist responsible for verifying the accuracy of the medical order.
Stride, Raymond	Petition for Disciplinary Action 4/18/06  Pending Order on Agreed Settlement	Failure to report license limitation taken by Alaska to the Department within 30 days.
Sysel, Stewart	Petition for Disciplinary Action 2/17/06  Hearing  Action pending	Dispensed prescription to an infant for Zantac with directions to take ¾ tsp bid and it should have been take ¾ ml bid.
Wells, James L.	Petition for Disciplinary Action 10/20/05  Hearing 12/20/05 continued  Proposed Agreed Settlement 10/20/05  Order Rejecting Agreed Settlement 10/28/05  Amended Petition for Disciplinary Action 3/16/06  Order on Agreed Settlement 3/27/06 <ul style="list-style-type: none"> <li>Civil Penalty of \$3,000</li> <li>3 year Probation</li> </ul>	Audit results showed significant losses of controlled substances; failure to keep accurate records of receipt and disposition of controlled substances.  Filled a prescription for Griseofulvin, an anti-fungal medication. The prescriber order Guaifenesin, mucus thinner.
Wendover, David	Petition for Disciplinary Action 3/14/06  Hearing 4/17/06  Pending Order	Theft of pharmaceuticals from place of employment; Opioid dependency; possession of controlled substances without a valid prescription; discipline against Kansas license.

#### Non-Disciplinary Information – Actions Taken/Pending

Name	Actions Taken and/or Pending	Alleged Violation
Barrett-Zoucha, Christine	Assurance of Compliance 3/13/06	Failure to report conviction of Driving Under the Influence.
Cochran, Teresa M.	Assurance of Compliance 3/20/06	Failure to report conviction of Reckless Driving, 1 <sup>st</sup> offense.
Culbertson, Dennis	Assurance of Compliance 3/13/06	Prepared and dispensed a prescription for 0.025 mg Synthroid without counseling. The prescription was supposed to be for 0.25 mg Synthroid.

Name	Actions Taken and/or Pending	Alleged Violation
Kubat, Michael A.	Assurance of Compliance 3/2/06	Allegedly compounded and dispensed domperidone outside the Investigational New Drug protocol.
Podraza, Jeffrey	Assurance of Compliance 3/8/06	Failure to report conviction of Driving Under the Influence, 1 <sup>st</sup> offense.
Volcek, Laura	Assurance of Compliance 4/4/06	Suspended on two separate occasions for allegedly refusing to send metronidazole tablets to a ward when ordered to do so and for allegedly harassing another staff member; Failure to report the suspensions to the Department within 30 days.

**(10A) Pharmacist Intern with Misdemeanor/Felony Convictions (1)**

**(10B) Pharmacist Applications with either Convictions/Disciplinary Action/Other (13)**

**(10C) Reinstatement of a Pharmacist License After Non-Disciplinary Revocation of More Than One Year (1)**

**(10D) Mail Service Pharmacy Renewal with Past Disciplinary Action (2)**

**(11) Pharmacy Technician Manuals (3)**

Zarek explained the new complaint process. Zarek will continue being the complaint screener.

**APPROVAL OF MINUTES**

**March 6, 2006**

- Pages 1: Under Report from the Deans, spell out the proper names of the two deans and spell out the proper names of the universities; 3<sup>rd</sup> paragraph, change “Mr.” to “Dr.”.
- Pages 2-4: No changes.
- Page 5: Under Wholesale Drug Distribution Act (LB 318), correct the spelling of all mention of “Broyca” to “Boryca”; 2<sup>nd</sup> paragraph, line 2, change “sale” to “sell”; 4<sup>th</sup> paragraph, line 4, spell out “HDMA” so that it reads “Healthcare Distribution Management Association (HDMA)”; and add “of all transactions” after “0.05%”.
- Page 6: In the 4<sup>th</sup> paragraph change “Web sit” to Web site”; in the 5<sup>th</sup> paragraph, line 3, add “of” after the word “approval”.
- Page 7: 1<sup>st</sup> paragraph, line 4, add the word “review” before the word “process”.
- Page 8: No changes.
- Page 9: Under Action Items, 1<sup>st</sup> paragraph, line 1, add the word “is” after the word “she”.

Labenz moved, seconded by Zarek, to approve minutes from March 6, 2006 as amended. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

**April 17, 2006 - Conference Call**

- Page 1: No changes.

Zarek moved, seconded by Kaczmarek, to approve the conference call minutes from April 17, 2006. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

**January 24, 2006**

Borchert moved, seconded by Labenz, to open the approved minutes from January 24, 2006, for review. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Joni Cover, Nebraska Pharmacists Association (NPA), submitted corrections to the Department for page 3-4 of the January, 24, 2006 minutes. The corrections are under Faxed Prescription for Controlled Substances – Roger Brink. Roger Brink, Department Legal reviewed the corrections and agreed with the changes except for in paragraph 7, line 2, the word “must” should not be changed. Zarek moved, seconded by Labenz, to re-approve the January 24, 2006 minutes as amended following the suggestions of Mr. Brink. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

## **APPLICATION REVIEW**

Zarek moved, seconded by Labenz, to approve the pharmacist application of Todd Ahlers under probationary terms and conditions for 5 years, after he passes both the North American Pharmacist Licensure Examination (NAPLEX) and the Multi-state Pharmacy Jurisprudence Examination (MPJE). The probationary terms and conditions should be the standard for those used for someone diagnosed with chemical dependency. The Board's basis for this decision is recent diagnosis of alcohol abuse. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Kaczmarek moved, seconded by Labenz, to approve the pharmacist application of Lynsey Liebig under probationary terms and conditions for 3 years, after she passes both the NAPLEX and the MPJE. The probationary terms and conditions should be the standard for those used for someone diagnosed with chemical dependency. The board's basis for this decision is the current probation of her pharmacist intern registration. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Labenz moved, seconded by Zarek, to table the pharmacist application of Jon Merchen and request that he appear before the Board at their next scheduled meeting on July 27, 2006. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Borchert moved, seconded by Labenz, to approve the pharmacist application of Jill Noerrlinger. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Zarek moved, seconded by Labenz, to approve the pharmacist application of Kathryn Yambor. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Kaczmarek moved, seconded by Zarek, to request a pre-reinstatement investigation of John Johnson. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Zarek moved, seconded by Kaczmarek, to table the reinstatement after discipline application of Milton Munson until the Board receives the pre-reinstatement investigation report. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Zarek moved, seconded by Labenz, to research whether Pet Med Express violated their probation by not reporting disciplinary actions taken by other states. If Pet Med Express violated their probation, the Board suggested a fine of \$5,000 and to extend their probation for an additional three years. If Pet Med Express did not violate their probation, the Board suggested renewal of their mail service pharmacy license. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Kaczmarek moved, seconded by Labenz, to renew the Prime Therapeutics mail service license #430. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

## **PHARMACY TECHNICIAN MANUALS (1) - CONSENT**

### **BOARD OF NURSING – PAIN MANAGEMENT GUIDELINES – KAREN BOWEN, M.S., R.N., HHS NURSING PRACTICE CONSULTANT**

Ms. Bowen informed the Board that she is pursuing a joint statement on pain management guidelines with the Board of Medicine and Surgery, the Board of Pharmacy, and the Board of Nursing. Kaczmarek volunteered to be the Board representative for Ms. Bowen's project for developing a joint statement on pain management guidelines.

## **LEGISLATION UPDATE**

### **Wholesale Drug Distribution Act (LB 318)**

Wisell informed the Board that LB 318 was amended into LB 994. LB 994 passed and will become effective on July 14, 2006.

#### Cancer Drug Repository Program (LB 1116)

Wisell informed the Board that LB 1116 passed with an emergency clause, therefore LB 1116 became effective March 14, 2006.

#### Uniform Licensing Law Rewrite (LB 1177)

Wisell informed the Board that LB 1177 has been indefinitely postponed.

#### Other Legislation

Nothing to discuss at this time.

#### **PSEUDOEPHEDRINE FEDERAL LEGISLATION IMPACT**

Barr explained that the Federal government has passed legislation concerning the sale of pseudoephedrine. Nebraska's law includes exemptions that should be addressed. The Board will work with the NPA to address the changes to the exemptions.

#### **FINANCIAL REPORT**

Wisell explained the financial report. The financial report shows that the Board is within budget.

#### **UPDATE ON 175 NAC 8 REGULATIONS GOVERNING PHARMACIES**

Wisell explained the increase in fees for pharmacies and other changes to the regulations. 175 NAC 8 still needs to be set for hearing.

#### **2007 LEGISLATIVE PROPOSALS**

##### Registering Pharmacy Technicians

Zarek and Apking will meet with the workgroup in June to develop language for legislation.

##### Automated Dispensing in Long-Term Care (LTC) Facilities

There is a workgroup meeting scheduled for May 31<sup>st</sup> to develop initial language which will include language on tele-pharmacy and using automated dispensing in LTC facilities. Ron Hospodka, R.P., Creighton University School of Pharmacy and Health Professions mentioned that labeling exemptions should be addressed.

#### **REGULATIONS DEVELOPMENT**

##### 181 NAC 6 Cancer Drug Repository Program

Wisell explained the changes. The Board questioned whether item #3 under 6-003.02 would violate the Health Insurance Portability and Accountability Act (HIPAA). The Board suggested adding the word "program" to the end of item #3 under 6-003.06. Kaczmarek moved, seconded by Borchert, to approve the amended language but not the concept of the repository program. Voting aye: Borchert, Kaczmarek, and Zarek. Absent: None. Voting nay: Barr and Labenz. Motion carried.

##### Immunosuppressant Repository

Borchert moved, seconded by Labenz, to postpone approval until the Board is able to review the draft regulations. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried. **Agenda Item.**

##### Implementation of the Wholesale Drug Distribution Legislation

Barr suggested meeting in a small workgroup to develop the draft language for the regulations. The small workgroup will present to the larger workgroup later in June. **Agenda Item.**

## **PRACTICE ACT CHANGES**

The Board requested staff to forward copies of the practice act changes and the Uniform Licensing Law (ULL) rewrite.  
**Action Item: Staff will forward copies of the practice act changes and the ULL rewrite to the Board members.**

## **REPORT FROM THE PMP REGIONAL MEETING**

Klein updated the Board on the PMP regional meeting.

## **PRESCRIPTION DRUG MONITORING PROGRAM (PMP) GRANT**

Borcher moved, seconded by Labenz, to pursue a planning grant. Voting aye: Barr, Borcher, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried. The Board would like to see a draft of the grant application at their next scheduled meeting scheduled for July 27, 2006. Barr suggested reviewing Iowa's grant language. **Action Item: Klein to draft a PMP planning grant and present to the Board on July 27<sup>th</sup>, 2006. Agenda Item.**

## **PATIENT SAFETY RFP UPDATE**

Apking explained that the revised RFP has been sent to DAS Materiel Division for final review. Apking will notify the Board when the RFP is posted. **Action Item: Apking to notify the Board members when the RFP has been posted.**

## **IMPACT OF MEDICARE PART-D**

Zarek mentioned that Medicare Part-D has significantly changed the reimbursement costs for generic medications. Barr commented that some pharmacies have closed because of the difficulty in signing up for the different Medicare Part-D contracts. This has affected the care a patient receives in Nebraska.

## **NABP ISSUES**

### **Report from NABP's Annual Meeting**

The Board gave a short report of the meeting and stated that the meeting was very informative.

### **State Restrictions for Licensure Transfer**

No comment at this time.

### **Revision of the Model Rules for the Licensure of Wholesale Distributors: Surety Bond Language**

Barr will address this issue when developing the draft language for regulations governing wholesaler drug distribution.

### **New Federal Law Aims to Stop Duplicate Controlled Substances Administration**

No comment at this time.

### **Changes to NABP's Model Act Reflect Profession-wide Shift in Technician Regulations**

No comment at this time.

### **Reporting Discipline of Pharmacist Interns to NABP**

The Board requested that discipline taken against pharmacist interns should be reported to National Association of Boards of Pharmacy (NABP).



## **COMMITTEE REPORTS**

### **MPJE Committee**

Nothing to report at this time.

### **Tri-Partite Committee on Internship**

Nothing to report at this time.

### **Formulary Advisory Committee**

Wisell explained that a new member has been appointed to the committee. The new member is Paula Eurek, R.D.

## **ACTION ITEMS**

Newsletter articles are needed. Kopf will write an article on reporting controlled substance losses. Other suggestions for newsletter articles are medication guides and new pharmacist-in-charge responsibilities. **Action Item: Kopf will write an article on reporting controlled substance losses.**

## **DYNAMIC WORKLOAD BALANCING SYSTEM-GOMER TAYLOR, WALGREENS**

Gomer Taylor, R.P. and Jeff Hines, R.P., Walgreens, presented a new workload balancing system they would like to implement. The system will utilize pharmacists at other locations to help with the dispensing process, such as drug utilization review when pharmacies get busy. The Board would like to review the system again before Walgreens implements it.

## **CORRESPONDENCE AND GENERAL INFORMATION**

Nothing at this time.

## **ADJOURNMENT**

Zarek moved, seconded by Labenz, to adjourn the meeting at 5:00 p.m. Voting aye: Barr, Borchert, Kaczmarek, Labenz, and Zarek. Absent: None. Voting nay: None. Motion carried.

Respectfully submitted,

(Signature on file with Department)

Linda Labenz, Secretary  
Board of Pharmacy